



BOARD OF APPEALS  
Enid Starr, Co-Chair  
Jesse Geller, Co-Chair  
Robert De Vries

RECEIVED  
*Town of Brookline*  
*Massachusetts*

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 080046

Petitioner, Watson Reed, applied to the Building Commissioner for permission to construct a retaining wall and accessory parking spaces on his property at 1073 Beacon Street. The application was denied and an appeal was taken to this Board.

On 15 October 2008, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed 8 January 2009, at 7:15 p.m. in the Selectmen's hearing room as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to his attorney (if any) of record, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on 18 and 25 December 2008 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

**NOTICE OF HEARING**

**Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:**

**Petitioner: REID WATSON D**

Location of Premises: **1073 BEACON STREET**

Date of Hearing: **01/08/2009**

Time of Hearing: **7:15 p.m.**

Place of Hearing: **Selectmen's Hearing Rm.**

A public hearing will be held for a variance and/or special permit from:

- 1) **5.09.2.a and 5.09.2.d; Design Review, Special Permit Required.**
- 2) **5.91; Minimum Usable Open Space, Variance Required.**
- 3) **For the Design of All Off-Street Parking Facilities:**
  - 6.04.2.c; Minimum Width of Aisles, Variance Required.**
  - 6.04.2.f; Backing onto Alley, Variance Required.**
  - 6.04.4.a; Width of Exit and Entrance Drive, Variance Required.**
  - 6.04.5.b; Set back From Street Lines, Variance Required.**
  - 6.04.12; New Facilities – Existing Structures, Special Permit Required.**
- 4) **8.02.2; Alteration or Extension, Special Permit Required of the Zoning By-Law to construct a retaining wall and accessory parking spaces per plans at 1073 BEACON STREET BRKL.**

Said Premise located in an **M-2.0** (Apartment House) district.

*Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.*

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*

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At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Jesse Geller and Board Members, Kathryn Ham and Mark Allen. Carlos Ferreira , a registered professional engineer, of CF Engineering, 103 Crepper Hill Road, North Grafton, MA presented the case before the Board.

Mr. Ferreira described the site and neighborhood at 1073 Beacon Street as located in the center of the block of row housing on the south side of Beacon Street between Hawes Street and Carlton Street. This property is a four-story, two-family dwelling with no parking on site. Access to the rear of this lot is provided by an 8-foot passageway that runs from Hawes Street to Carlton Street. This passageway turns and widens into 16 feet at the rear of this dwelling. There are several other land uses in this area including multi-family housing, general business and commercial.

Mr. Ferreira said that the owners are proposing to fill and raise an approximately 23.5' wide by 25.9' deep area at the rear of the building to match the grade and elevation of the existing rear passageway in order to create a parking area for two vehicles. This would require the construction of new modular concrete retaining walls around the perimeter of the raised area, approximately 9 feet high. The new walls would be a minimum of four feet from the dwelling's rear façade. A new railing would be constructed along the outside edge of the parking area, and a new stair and landing would be constructed to lead down from the parking area to the basement level of the dwelling.

Mr. Ferreira stated that he believed that his clients needed relief under **§5.09, Design Review**, **§5.91, Usable Open Space**, **§6.04.12 Waiver of Dimensional Requirements for Parking** and **§8.02.2 Pre-existing, Non-conforming structure**.

The Chairman asked whether any member of the Board had questions. Mark Allen asked whether the petitioner had an easement across the private way. Mr. Ferreira responded that he was not sure of the rights that the owner's had to the roadway. The Building Commissioner offered that in many cases throughout Brookline, similar situations exist. He said that the rear passageways were historically constructed to provide access and provision for utilities to the rear of large row-type housing units. Lara Curtis, senior planner, noted that during her research, she

contacted the Town Engineering Department to ascertain ownership of the passageway. They responded that the town did not own the passageway and offered that, at one point, the entire area was under one ownership and subdivided over time. The petitioner maintained that they have prescriptive rights over the driveway. Mr. Ferreira provided additional information including photographs of the driveway.

Chairman Geller requested clarification regarding the grade along the length of the driveway and Mr. Ferreira responded that the grade was minimal, essentially flat from one end to the other. Also, he stated that the grade change from front to rear was approximately nine feet. Chairman Geller inquired about the existence of open space at the site. Mr. Ferreira responded that the lot does not currently meet the open space required under the Zoning By-Law and essentially the only open space available is a very small front yard and the patio to the rear of the property, adjacent to the driveway. Mr. Ferreira suggested that given the planned use of pavers within the new parking area similar to those currently in use, the new parking area would have a similar appearance to the existing patio. Chairman Geller inquired about potential safety issues caused by vehicles entering or backing-out of the parking area. Mr. Ferreira responded that essentially only residents use the driveway and they are all well aware of the potential pitfalls due to the proximity of parking along the drive. He said that since the drive narrows to half the width, 8 feet, immediately after the petitioner's proposed parking area, residents slow down anyway and given the low-density use he does not anticipate any safety issue with the petitioner's proposal.

The Chairman asked whether anyone wished to speak in favor or against the proposal. No-one, other than the petitioners, spoke in favor of the petition and no-one spoke against the petition.

Ms. Curtis delivered the findings of the Planning Department:

### **Section 5.09.2.a & 5.09.2.d – Design Review**

New structures and outdoor uses on a lot that fronts on or is within 100 feet of Beacon Street are subject to design review. Comments on the most relevant of the Community and Environmental Impact and Design Standards are as follows:

*Preservation of Landscape:* A portion of the rear yard of this property will be filled in because there is a nine foot grade change from the rear yard to the rear passageway, whose elevation is maintained by an existing retaining wall. The proposed grade change is in keeping with some neighboring yards that have done similar projects to provide parking. The area to be used as parking is not currently landscaped

*Open Space:* A small portion of the rear yard would remain with this proposal, although the applicant has not submitted a landscaping plan for this area. The existing rear yard is currently not a pleasant outdoor area, due to its sunken grade and lack of light, and it is not actively used for open space.

*Circulation:* This proposal would make the rear yard usable as a parking area, and the proposed spaces are of typical size and orientation. One space would be for a compact car, as the passageway is angled along the rear lot line.

*Stormwater Drainage:* The new paved area will add to the lot's stormwater drainage, so the applicant should submit a new drainage plan to the Engineering Department for approval.

### **Section 5.91 – Minimum Usable Open Space**

A lot with a multi-family dwelling in an M-2.0 District shall include usable open space equal to 10 percent of the gross floor area of all buildings on the lot. This is a pre-existing non-conforming condition. The rear yard is not actively used as open space at present, primarily because of the yard's sunken grade and lack of light.

### **Section 6.04.2.c – For the Design of All Off-Street Parking Spaces**

For a 9 foot wide parking space perpendicular to its access road, the access road must be a minimum of 22 feet wide. These spaces are not quite perpendicular, but they are within 45 degrees of perpendicular to the access road. The access road to these proposed parking spaces is 16 feet wide.

### **Section 6.04.2.f – For the Design of All Off-Street Parking Spaces**

Where the sole access to a parking stall is an alley adjacent to the rear lot lines, there must be at least 20 feet of clear backing between the rear line of the parking stall and the opposite and more distant line of the alley. In this case, the parking space abuts the access road, which is only 16 to 18 feet wide.

### **Section 6.04.5.b – For the Design of All Off-Street Parking Spaces**

In M-2.0 Districts, the surfaced area of a parking lot and all entrance and exit drives shall be set back a minimum of 10 feet from all street lot lines, and 5 feet from all other lot lines, except where an access driveway crosses the street lot line. These setbacks do not exist at this site as the parking spaces abut the rear lot line and the entrance and exit drive abuts all of the proposed parking spaces and the rear lot lines of this and all other properties in this block.

	Required	Proposed	Finding
Access Road	22 feet	16 feet	<u>Special Permit*/Variance</u>
Parking Area Rear Yard Setback	5 feet	0 feet	<u>Special Permit*/Variance</u>
Parking Area Side Yard Setback	5 feet	0 feet	<u>Special Permit*/Variance</u>

\*Under **Section 6.04.12** the Board of Appeals may, by special permit, allow in lieu of the dimensional requirements of this section, the substitution of other dimensional requirements, provided that such substitution is necessary to permit the installation of some or all of the off-street parking spaces that would be required for a similar new building, and where new parking facilities are being installed to serve existing structures and land uses.

#### **Section 8.02.2 – Alteration or Extension**

A special permit is required for any change to a pre-existing non-conforming use or structure.

Ms. Curtis reported that the Planning Board was not opposed to this application to construct two parking spaces in a rear yard behind Beacon Street. The applicant has provided information indicating vehicles can enter and exit from the proposed spaces without crossing onto neighboring properties. There are similar parking arrangements along this alleyway that appear to be actively used despite the narrow conditions, including immediately abutting this property. She said that the applicant should determine where trash and recycling containers will be located with this proposal, and indicate this detail, as well as details regarding the site drainage, railing, and paving materials on a revised site plan. Additionally, the remaining area should be well landscaped or finished in order to improve its appearance, taking into consideration the minimal light conditions, and a detailed landscaping plan should be submitted prior to issuance of a building permit. In order to help screen and beautify the parking area, planters with landscaping shall be installed along the parking area edge closest to the building. Therefore, the Planning Board recommended approval of the proposal and the submitted plans, prepared by Carlos Ferreira, and dated 10/07/08

and 11/17/08, and the retaining wall layout plans last dated 8/25/08, subject to the following conditions:

1. Prior to the issuance of a building permit, a revised site plan, indicating locations of trash and recycling containers, drainage, planters, and paving details, and revised elevations showing greater detail of the parking area railing, stairs, and related features, shall be submitted to the Assistant Director for Regulatory Planning for review and approval. Planters shall be installed along the edge of the parking area closest to the dwelling.
2. Prior to the issuance of a building permit, a final landscaping plan for the rear yard area shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. Prior to the issuance of a building permit, a final drainage plan for the parking area and rear yard shall be submitted to the Director of Engineering for review and approval.
4. The paving of the parking area and the immediately adjacent alleyway shall be maintained in good condition.
5. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer; 2) final elevations of the retaining wall, stamped and signed by a registered engineer; 3) a final landscaping plan, stamped and signed by a registered landscape architect; and 4) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

Michael Shepard, Building Commissioner delivered the comments of the Building Department. He said that there are many similar situations throughout Brookline. The rear driveways were used not as through streets but for pedestrian access to the buildings that front on Beacon Street as well as utilities. Over time, he said, the private drive has evolved to provide not only access but in many cases parking as well. He reported that after visiting the site and reviewing the plans, parking could be accommodated without jeopardizing the safety and welfare of the public. He said that since the drive narrows just after the petitioner's property, motorists almost wholly residents of the area, naturally slow down. He said that the Building Department supports the

project, agrees that the requested relief is appropriate and agrees with the conditions proposed by the Planning Board.

During deliberations, Kathryn Ham commented that the proposal before the Board was an appropriate use of the space and that evidence provided by the petitioner indicates that since the affected area receives very little light, the existing patio is of very little use. She said that it appeared that many of the neighbors near the site were using their property in the same fashion. Mark Allen pointed out that the driveway was not primarily a pedestrian access and therefore any danger to pedestrians is minimized. He said that the modular block proposed for the walls by the petitioners, while somewhat unsightly, will not be seen by anyone other than the petitioners themselves and therefore will not become a visual burden to abutters. Mr. Allen noted that the petitioners proposed the use of bituminous concrete paving for the surface of the parking area and stated that he would be more supportive if pavers, similar to those used on the existing patio were installed. He said the pavers could mitigate the sense of loss of open space. Chairman Geller stated that he felt the proposal met the standard for the grant of special permit relief under §9.05. Regarding §5.09, Chairman Geller stated that his questions were primarily related to circulation, drainage and security and given the input of the petitioner as well as the Building Commissioner he was satisfied that these concerns were addressed. Chairman Geller said he still had question regarding §8.02.2 specifically the requirement that "...any nonconforming condition may not be increased unless specifically provided for in a section of this By-Law..." Chairman Geller inquired whether by removing a large portion of the existing patio any open space nonconformity was effectively being increased. The Building Commissioner said that the Planning Board, during their hearing, was similarly concerned but found that the because of the poor quality of the existing open space that, in effect, there was no increase in the nonconformity.


pavers as mitigation for the loss of open space.

5. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer; 2) final elevations of the retaining wall, stamped and signed by a registered engineer; 3) a final landscaping plan, stamped and signed by a registered landscape architect; and 4) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of  
The Board of Appeals

RECEIVED  
TOWN OF BROOKLINE  
TOWN CLERK  
JAN 26 2009  
Filing Date: January 26, 2009

A True Copy  
ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals

  
Jesse Geller, Chairman